



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-P-C-

DATE: FEB. 21, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a psychological counseling business, seeks to employ the Beneficiary as a marriage and family therapist. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the Beneficiary does not have the requisite educational degree to qualify for the offer position under the terms of the labor certification.

On appeal the Petitioner submits a brief and supporting documentation. The Petitioner asserts that the Beneficiary has a foreign equivalent degree to a U.S. master's degree and therefore meets the educational requirement of the labor certification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).¹ *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

¹ The date the labor certification is filed is called the "priority date." *See* 8 C.F.R. § 204.5(d).

II. ANALYSIS

The Director found that the Beneficiary did not have the degree required by the terms of the labor certification. A beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). Here, the accompanying labor certification requires a master's degree in psychology or "marriage and family therapist" and does not allow for an alternate combination of education and experience.

In section J of the labor certification the Petitioner claims that the Beneficiary's highest level of education relevant to the requested occupation is a master's degree in psychology from the [REDACTED] in [REDACTED] Argentina, awarded in 1999. As evidence of the Beneficiary's educational credential, the Petitioner submitted copies of the Beneficiary's academic records, augmented by a letter from [REDACTED] academic secretary in the faculty of humanities. These documents show that the Beneficiary received a *titulo de Licenciada en Psicología* (title or degree of licentiate in psychology) from [REDACTED] in May 1999 after completion of a five-year academic program, including a research project culminating in a thesis, between March 1993 and December 1998. The Petitioner also submitted a credential evaluation from [REDACTED] stating that the Beneficiary's five-year degree of licentiate in psychology from Argentina is equivalent to bachelor's and master's degrees in psychology from an accredited college or university in the United States.

In evaluating the Beneficiary's degree, the Director referred to the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),² which described the *Licenciado(a)* in Argentina as usually a five-year first degree program that is comparable to a bachelor's degree in the United States. In his decision, the Director referred to EDGE and other evidence in the record, including the [REDACTED] evaluation which confirms that the Beneficiary's licentiate degree was a five-year program, to find that the Beneficiary's degree was not equivalent to a U.S. master's degree, as required by the labor certification.

On appeal the Petitioner asserts that the Beneficiary's *Licenciado en Psicología* comprised six academic years, not five, citing a letter from the university's academic secretary which described the Beneficiary's program as comprising five years of classwork and a one-year research project. The Petitioner claims that the six-year duration of the Beneficiary's program at [REDACTED] accords with the [REDACTED] evaluation's conclusion that the Beneficiary's licentiate degree is equivalent to a U.S. bachelor's and master's degree.

² EDGE was created by AACRAO, which is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." <http://www.aacrao.org/about> (last visited Feb. 16, 2018). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (last visited Feb. 20, 2018).

However, the [REDACTED] evaluation identifies the Beneficiary's licentiate degree as a five-year program and the Beneficiary's transcripts do not support the assertion that the degree was a six-year program. While the record does show that the Beneficiary's studies at [REDACTED] lasted the better part of six years, from March 1993 to December 1998, it does not show that the *Licenciado en Psicología* was in fact a six-year academic program. The Beneficiary's transcripts list five academic years of three trimesters each. The research project ("Thesis in Psychology") is listed in the first and second trimesters of the fifth year, not as a separate year six. The transcripts indicate that all of the Beneficiary's coursework was completed by December 1997, and the thesis was completed in December 1998. The fact that the thesis may have been completed by the Beneficiary in a sixth year, however, does not mean that her licentiate degree in psychology was necessarily a six-year academic program. Taking six years to complete a five-year degree program does not turn it into a six-year degree program.

Evaluations of educational credentials by evaluation services and individual evaluators are utilized by USCIS as advisory opinions only. We may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are "in any way questionable." *Matter of Caron Int'l. Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, the evaluation from WES lists the courses taken by the Beneficiary and assigns them "U.S. Semester Credits" to arrive at the conclusion that the Beneficiary's education is equivalent to both a bachelor's and master's degree. However, the Beneficiary's transcript does not indicate credits awarded for each course and the evaluation does not explain the methodology of calculating and awarding U.S. semester credits to the courses taken by the Beneficiary. Given this deficiency in the evaluation, the Director rightly referred to EDGE regarding the Beneficiary's degree.

The Petitioner contends on appeal that a broad database such as EDGE provides only generic descriptions of foreign educational credentials which are ill-suited to case-by-case determinations in petitions adjudicated by USCIS. Neither the Act nor its regulations, the Petitioner continues, gives EDGE or AACRAO preferential status vis-à-vis other credential evaluation services to evaluate the U.S. equivalency of foreign degrees. USCIS does not utilize EDGE as an exclusive source for determining foreign academic equivalencies. We do, however, consider EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies and federal courts have affirmed our use of EDGE to evaluate foreign educational credentials. The information in EDGE has been vetted by a panel of experts, reflects the panel's assessment of the quality of the educational institutions and programs reviewed, and has general applicability for each of the foreign credentials appearing in the database, including the *Licenciado(a)* in Argentina.³

³ Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign educational equivalencies. See, e.g., *Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is "a respected source of information"). In *Confluence Int'l. Inc. v. Holder*, No. 08-2665, 2009 WL 825793 (D. Minn. Mar. 27, 2009), the court determined that we provided a rational explanation for our reliance on information provided by AACRAO to support our decision.

As described in EDGE, the *Licenciado(a)* in Argentina is usually a five-year first degree program that represents a level of education comparable to a bachelor's degree in the United States. EDGE also has an entry for *Magister* or *Maestria*, which it describes as a graduate degree awarded by a university, usually after two years of study, that represents a level of education comparable to a master's degree in the United States. Admission to a master's degree program, EDGE states, requires a first degree, such as a *licenciado* or *titulo*, in the same field. Thus, a master's degree in Argentina usually requires two years of study beyond a first degree. The Beneficiary's *titulo de Licenciado en Psicología* was a five-year academic program, as indicated on her transcripts, and a first degree in psychology. The Beneficiary does not have any higher degree, as far as the record shows. The Petitioner makes no claim that she has a *Magister* or *Maestre* in Psychology. We conclude, therefore, that the Beneficiary's licentiate degree in psychology from [REDACTED] is equivalent to a bachelor's degree from a U.S. college or university. As such, it does not meet the labor certification's minimum educational requirement of a master's degree.

The Petitioner also asserts on appeal that the Beneficiary's registration as a marriage and family therapist (MFT) intern by the California Board of Behavioral Sciences (Board) from December 2012 through January 2016, indicates that the Beneficiary's possession of the required degree. The Petitioner submits excerpts from the Business and Professions Code of California, Chapter 13, stating that to qualify for licensure as an MFT, or an intern eligible for licensure, a person must have a qualifying doctoral or master's degree and that a foreign degree must be evaluated by a member of the [REDACTED] to determine whether it is equivalent to a qualifying master's or doctoral degree in California. The Petitioner claims that because [REDACTED] is a member of [REDACTED] and only [REDACTED] member evaluations of a foreign degree are accepted by the Board in determining whether an applicant has a qualifying doctoral or master's degree for MFT licensure or registration as an intern, we should accept the Board's registration of the Beneficiary as an MFT intern as evidence that it recognizes the Beneficiary's licentiate degree in psychology as equivalent to a U.S. master's degree.

However, the academic requirements of a state government institution like the Board with regard to professional licensure in that state are not dispositive for USCIS in determining the U.S. equivalency of foreign degrees. USCIS is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions of the federal court of appeals from whatever circuit that the action arose. See *N.L.R.B. v Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the Administrative Procedures Act, even when they are published in private publications or widely circulated). Therefore, the academic requirements for the Beneficiary's registration as an MFT intern by the State of California do not govern USCIS' determination, in the context of this immigrant visa petition, of whether the Beneficiary's *titulo de Licenciado en Psicología* is equivalent to a U.S. master's degree.

III. CONCLUSION

The Beneficiary does not have a U.S. master's degree or a foreign equivalent degree, as required to meet the minimum educational requirement of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of N-P-C-*, ID# 638358 (AAO Feb. 21, 2018)